2. The determination of the lawful standard of "invention" applicable to the facts of a particular patent controversy is within the province of a court, as opposed to a jury, and the correctness of the criteria applied by a District Court in a given case is properly reviewed by a Court of Appeals. The Court of Appeals below has here, as many times before, merely applied the law of the 1952 Patent Act to particular facts, and its conclusion here is, as in those other cases, wholly consonant with the general patent law and solely determined by the unique fact situation presented by this, as by every other, case of truly patentable invention.

The question of whether or not a trial court has employed the correct criteria of invention in determining the validity of a patent is one of law subject to review on appeal. *A. & P. Tea Co. v. Supermarket Corp.*, 340 U. S. 147, 153-4 (1950); *Packwood v. Briggs & Stratton Corp.*, 195 F. 2d 971 (3 Cir. 1952). And of course, this rule is as applicable to cases where a trial judge, through error, invalidates a patent as it is to the reverse. *Fisch v. Gould*, *supra*; *Cameron Iron Works v. Stekoll*, 242 F. 2d 17 (5 Cir. 1957); *Blaw Knox Co. v. I. D. Lain Company*, 230 F. 2d 378 (7 Cir. 1956); *Ry-Lock Company v. Sears, Roebuck & Co.*, 227 F. 2d 615 (9 Cir. 1955), *cert. den.* 350 U. S. 987 (1956), *reh. den.* 351 U. S. 915 (1956); *Stearns v. Tinker & Rasor*, 220 F. 2d 49 (9 Cir. 1955), *cert. den.* 350 U. S. 830 (1955); *[illegible] v. Gotham*, 219 F. 2d 511 (5 Cir. 1955), *cert. den.* 350 U. S. 826 (1955), *reh. den.* 350 U. S. 905 (1955); *Lewyt Corp. v. Health Mor, Inc.*, 181 F. 2d 855 (7 Cir. 1950), *cert. den.* 340 U. S. 823 (1950); and see *[illegible] v. Watson*, 244 F. 2d 757 (App. D. C. 1957); *[illegible] v. Marzall*, 185 F. 2d 640 (App. D. C. 1950) [illegible]

forth in the 1952 Patent Act. It had decided seventeen cases* involving twenty-one patents up to the time of decision of this case in which the twin questions of scope and validity arose under that Act.

By these decisions, *ten patents* were held *invalid*, *eight* patents were held *valid*, and *three* patents were held *not infringed*. To reach these results, the Court of Appeals *affirmed* the trial court as to *thirteen patents*, *reversed* as to *eight*. In so doing it *overturned* four trial court holdings of *validity*, *two* of *invalidity*, and *two* of *infringement*. This statistical analysis shows that the Court of Appeals below has been astute to discriminate between the patent-worthy advance on the one hand and the product of routine technical progress on the other, giving the former only that scope of protection to which it is entitled under the law.

Petitioners suggest (Petition, page 11) that the tubeless tire is an example of a widely adopted commercial innovation not amounting to patentable invention. Not two months prior to the decision for which certiorari is sought, the Court of Appeals for the Fourth Circuit unanimously affirmed a District Court ruling that a widely publicized patent for a tubeless tire was invalid for lack of invention. *B. F. Goodrich Company v. United States Rubber Co.*, 244 F. 2d 468 (4 Cir. 1957). From this it is clear that the Court below is, by petitioners' own standards, capable of close discrimination as to the probative value of "commercial success" and we may safely conclude that the decision below was unfavorable to the infringing petitioners' hopes for a "free ride" because respondent's contribution truly deserved patent recognition.

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* *Westinghouse Electric Corp.* v. *Bulldog Elec. Prod. Co.*, 206 F. 2d 574 (1953), cert. den. [illegible] (1953); [illegible] 214 F. 2d 784 (1954); [illegible]

3. The Court of Appeals carefully considered all the evidence and correctly evaluated it under the governing law in reversing the District Court.

Petitioners' suggestion is untenable that a court as experienced in the law of patents as the Court of Appeals below, would "brush aside" a trial court's finding without closely examining all the evidence made of record, applying the correct law to the evidence and then reversing the trial court only if it had "a firm conviction that a mistake had been committed".

It is apparent from the Court of Appeals's opinion that it closely examined the printed prior art, weighed the legal effect of prior unsuccessful attempts by others skilled in the art, and reviewed the actual history of the industry's other efforts to solve the problem before reaching its decision to uphold the validity of the patent involved.

That the court applied the correct law to the evidence is obvious from the numerous citations to decisions of this Court and of other circuit courts.[1] Thus, for example, the proper weight to put on the factor of commercial success as set forth by this Court in *A. & P. Tea Co. v. Supermarket Corp., supra*, was considered along with the evi-

After applying the law to the facts, the court was left with the stated conviction that the invention was "ingenious" and was such an "innovation" as was intended to be covered by the Patent Act even if the statutory presumption of validity that attends a patent grant as set forth in the Patent Act of 1952 were not considered. In so doing the court below did no more than give legal effect to the *ante litem* practical tribute rendered ~~the~~ IN industry by petitioners in abandoning their own contemporary developments of different solutions of the same problem in favor of respondent's patented innovation.

CONCLUSION

The Petition for Writ of Certiorari herein should be *denied*.

Respectfully submitted,

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